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1 large refinance, such as the one at issue here,
2 simply on the basis of the consumer's
3 relationship with the bank; is that correct?

4 A. Correct.

5 Q. And so the last paragraph here,
6 paragraph 6, says: "The Credit Union cannot
7 proceed with the loan after noting that Ocwen
8 reported to Equifax that his home is in
9 foreclosure."

10 Is that right?

11 A. That's correct.

12 Q. So what would be the next step --
13 after a credit report is run -- what would be
14 the next step in proceeding with the loan
15 application?

16 A. They would make sure that the --
17 probably the next thing would be is make sure
18 that the debt-to-income ratio would fall in
19 line.

20 Q. And how about after that?

21 MR. WOOFTER: Jon, this is Andrew
22 Woofter.

23 Just to clarify, you're asking in the
24 event there would not have been a foreclosure or

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1 bankruptcy listed on the credit report, correct?

2 MR. KENNEY: That's right.

3 BY MR. KENNEY:

4 Q. I'm asking in your typical -- in your
5 typical loan, such as the one at issue here,
6 after a credit report is run, I'm just wondering
7 what the next steps are to proceed with the loan
8 application that would ultimately lead to
9 approve or denial.

10 A. Yeah, you've got several factors that
11 would be involved. You'd have to look at a
12 debt-to-income ratio. You'd have to look at the
13 loan-to-value ratio. Okay. You'd have to look
14 at the number of tradelines the member may or
15 may not have. There's several factors involved
16 in going through whether you're going to approve
17 or deny a loan.

18 Q. And it's my understanding that there
19 was no debt-to-income ratio analysis that
20 occurred here, correct, with Mr. Daugherty?

21 A. Correct. Once the foreclosure was
22 reported, everything stopped at that point.

23 Q. And there was no loan-to-value
24 analysis with Mr. Daugherty; is that correct?

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1 A. Correct.

2 Q. So even if Mr. Daugherty had no
3 foreclosure appearing on his credit report, it
4 is possible that he could have still been
5 ultimately denied for the loan depending on his
6 debt-to-income ratio and the loan-to-value?

7 A. Yes, that's true.

8 Q. Did Mr. Daugherty ever fill out a
9 formal credit application?

10 A. I don't know, I wasn't in when Debbie
11 Lee took the application. But I'm assuming he
12 did.

13 Q. Is this a common practice that a
14 consumer would fill out a formal loan
15 application before a credit inquiry would be
16 run?

17 A. Yes.

18 Q. And when One Community runs their
19 credit check, is there a particular service that
20 they use? For example, do they typically check
21 the TransUnion FICO score, Equifax or Experian?

22 A. On the mortgages? Mortgage loans are
23 what they call a Tri-Merge, they pull all three.
24 And then on the consumer side, we pull a

1 TransUnion credit score.

2 Q. I'm sorry, so who pulls the
3 TransUnion?

4 A. On the consumer side, it's TransUnion.

5 Q. Oh, for consumer loans it's a
6 TransUnion report, and for the mortgage loans,
7 it's a Tri-Merge; is that right?

8 A. Yes, sir.

9 Q. Okay. I understand.

10 So going -- I'd like to discuss the
11 TransUnion report now that was produced.

12 MR. KENNEY: And this is behind, I
13 believe this was produced in response to the
14 subpoena. Let's just mark the documents that
15 were produced by One Community in response to
16 the subpoena -- and this is the file that's
17 behind tab 5. We can just mark this as
18 Exhibit -- I believe we're on Exhibit 5 or 6; is
19 that right?

20 THE COURT REPORT: This will be
21 Exhibit 5.

22 * * *

23 (Whereupon, Napier Deposition Exhibit 5
24 was marked for purposes of

Page 30

1 identification.)

2 * * *

3 BY MR. KENNEY:

4 Q. Mr. Napier, the first page here of
5 Exhibit 5 is a CBCInnovis. Do you see that?

6 A. Yes, sir.

7 Q. And it looks like it says: "In File
8 Credit Report."

9 Is that right?

10 A. Correct.

11 Q. Can you tell me what that document is?

12 A. This is the Tri-Merge report that
13 would be pulled for a mortgage application.

14 Q. Okay.

15 And is this done -- is this done
16 internally within the bank? Or how do you --
17 how does One Community obtain a Tri-Merge
18 report?

19 A. We input the system, put the
20 information into the system. And then it
21 creates the Tri-Merge report, and then we can
22 print it off for review.

23 Q. When you say "the system," do you mean
24 One Community's own computer systems?

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1 A. Yes. And I think that ties in with
2 the CBC.

3 Q. Okay.

4 And it looks like there's, on this
5 first page, there's a date received and a date
6 completed. Do you see that?

7 A. Yes, sir.

8 Q. What are the differences between these
9 two dates? What does "date received" mean?

10 A. The date received I think is when it
11 was actually pulled.

12 Q. And what does "date completed" mean?

13 A. That, I'm not exactly sure.

14 Q. So is it possible that this Tri-Merge
15 report was pulled on May 21, 2015, which is the
16 date completed date?

17 A. No, more than likely it was done on
18 July of 2014.

19 Q. Okay.

20 There looks like there's three bureaus
21 here, maybe. It has Beacon, Empirica and Fair
22 Isaac score. Can you tell what those are?

23 A. Those would be the credit reports from
24 the -- if you look to the right of that, the

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1 EFX01, on that same Beacon 5.0 -- if you go to
2 the far right. That EFX01 would be Equifax. If
3 you drop down to the next block, the TRU would
4 be a TransUnion. And then the XPN would be the
5 Experian credit reports.

6 Q. And on the next page, it looks like
7 there are a couple entries here about tax liens;
8 is that right?

9 A. Yes, sir.

10 Q. And on the page after that, the next
11 page, it looks like there are some entries here
12 for Ocwen Loan Servicing. Do you see that?

13 A. Yes, sir, on the bottom of the page.

14 Q. Yes.

15 And one of them says: "Foreclosure
16 process started."

17 Do you see that one?

18 A. Yes, sir.

19 Q. And to the right of that, it says
20 EFX01; is that correct?

21 A. Correct.

22 Q. Does that mean that this foreclosure
23 was appearing on the Equifax report?

24 A. Yes.

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1 Q. And the entry above that, it also says
2 Ocwen Loan, and it has the same number. Do you
3 see that?

4 A. Correct.

5 Q. Does that mean that these two entries
6 are for the same loan?

7 A. That's what we weren't clear on. It
8 could be. I'm not real, real sure. But if you
9 notice, the balances owing are different on
10 there, as far as the dollar amounts.

11 Q. Right.

12 And this one also says EFX01; is that
13 right?

14 A. Correct.

15 Q. What does the TRU in parentheses mean?

16 A. That, I'm not sure.

17 Q. So other than this Tri-Merge report,
18 was there ever a formal, solely Equifax report
19 run by One Community?

20 A. No, sir.

21 Q. So where it says here the foreclosure
22 process started, is this how One Community knew
23 that Mr. Daugherty's credit file was showing a
24 foreclosure?

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1 A. Correct.

2 Q. Did you review any other documents
3 that indicated that Mr. Daugherty's credit file
4 was showing a foreclosure?

5 A. No, sir.

6 Q. And so is it fair to say that the only
7 way One Community knew that Equifax was
8 reporting a foreclosure is just by this
9 Tri-Merge report?

10 A. Correct.

11 Q. And I'd like to just -- if we keep
12 turning a couple pages, I believe it's actually
13 the last, the last three pages here. This looks
14 to be another credit report. It looks like a
15 TransUnion credit report.

16 And just let me know when you're
17 there.

18 A. (Witness complies.)

19 Okay.

20 Q. And the inquiry date here is May 21,
21 2015, as well; is that right?

22 A. Yes, sir.

23 Q. Do you know what that date means,
24 what's the significance of that date?

1 A. That's when the credit report would
2 have been pulled.

3 Q. So this credit report wasn't pulled
4 until May 21, 2015?

5 A. Correct.

6 Q. And do you recall why this particular
7 credit report was pulled?

8 A. I think this had to do with the
9 consumer loan that Mr. Daugherty applied for in
10 regards to his van repairs.

11 Q. So it's your understanding that this
12 TransUnion report was irrelevant with regard to
13 the refinance, the mortgage loan; is that right?

14 A. That is correct.

15 Q. And as we discussed, the inquiry date
16 here, 5/21/15 -- and just going back to that
17 Tri-Merge report, we discussed the date
18 completed says 5/21/15 as well.

19 A. Right.

20 Q. Is it possible that both of these
21 reports were run on the same day?

22 A. It's possible, but I wouldn't see why.
23 But, again, I wasn't in with the initial
24 interview with Mr. Daugherty on his refinance of

1 his mortgage, or his inquiry on the consumer
2 loan.

3 Q. And so this consumer loan that we're
4 talking about is for the vehicle, correct?

5 A. Correct.

6 Q. And under the report date here, it
7 says 7/22/2014. Is it possible that that could
8 have been the date that this credit report was
9 pulled?

10 A. It's possible, but more than likely it
11 was probably May 21 of 2015.

12 Q. Well, going back to those computer
13 notes that we had previously discussed, I know
14 those notes were regarding the consumer loan,
15 the car loan. And those notes were dated
16 July 23, '14, which is the day after this credit
17 report report date is dated.

18 A. Uh-huh.

19 Q. Is it possible that this report was
20 run with regard to the consumer loan in July
21 2014?

22 A. Yes.

23 Q. And going through this TransUnion
24 report, you would agree that there's no mention

1 of a foreclosure on this report, correct?

2 A. No mention of a foreclosure on this
3 one.

4 Q. I know we had talked earlier about
5 how -- because you saw the foreclosure on the
6 Tri-Merge report, the application process ended
7 there, correct?

8 A. Yes, sir.

9 Q. Was there any formal denial letter
10 that was sent to Mr. Daugherty?

11 A. I'm not so sure if there was one or
12 not. I'd have to check with Debbie Lee and see.
13 Generally there's an adverse -- what we call an
14 adverse action that's sent.

15 Q. Sure.

16 I just have a few more questions for
17 you. I appreciate your patience.

18 A. No problem.

19 Q. I'd like to just turn to some notes.

20 MR. KENNEY: This is behind tab 9,
21 and these look to be just handwritten notes.
22 Let's mark this Exhibit 6.

23 * * *

24 (Whereupon, Napier Deposition Exhibit 6

Page 38

1 was marked for purposes of
2 identification.)

3 * * *

4 BY MR. KENNEY:

5 Q. Mr. Napier, are you familiar with
6 these notes?

7 A. Yes, sir.

8 Q. And who are those noted created by?

9 A. Created my me.

10 Q. Is that your signature at the bottom
11 of the page?

12 A. Yes, sir, it is.

13 Q. And the notes say -- the notes say --
14 it looks like it was dated June 5, 2015,
15 correct?

16 A. Correct.

17 Q. And it says -- looks like it says:
18 "Dave gave me permission to talk to Jed
19 concerning any of his accounts. I gave Dave a
20 copy of this packet and informed him he
21 needed -- if he needed anything, to let us
22 know."

23 Is that right?

24 A. Correct.

1 Q. And did you ever speak directly with
2 Mr. Daugherty's attorney?

3 A. Yes.

4 Q. And what was the nature of that
5 conversation?

6 A. He just basically was filling me in on
7 what was going on, as far as Mr. Daugherty's
8 complaint.

9 Q. And how many times would you say that
10 you had met with Mr. Daugherty's attorney?

11 A. I think I only talked to him once, on
12 the phone.

13 Q. And during that conversation when you
14 talked about the basis of the complaint, did you
15 talk about anything else?

16 A. No, not really.

17 Q. And did you tell Mr. Daugherty's
18 attorney that he was denied a refinance loan?

19 A. Yes, I did.

20 Q. And did you tell him that the formal
21 application was never completed because the
22 tradelines -- or the Tri-Merge report showed a
23 foreclosure?

24 A. I don't remember if I told him that or

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1 not. I just know that once we saw the
2 foreclosure, we would have stopped the process.

3 Q. Do you recall if you ever told him
4 that the TransUnion report was not showing a
5 foreclosure on it?

6 A. I don't recall.

7 Q. Did you speak with Mr. Daugherty's
8 attorney regarding anything that we have not
9 previously discussed?

10 A. Not that I'm aware of.

11 Q. And did you seek assistance from
12 anyone outside of One Community when reviewing
13 or working on Mr. Daugherty's credit file?

14 A. No, we did not.

15 Q. Okay.

16 And is there anything that you talked
17 about with Mr. Daugherty or his attorney that
18 we've not discussed here today?

19 A. Not that I'm aware of.

20 Q. Okay.

21 I think that's all the questions I
22 have for you, Mr. Napier.

23 A. All right, sir.

24 Q. I'll turn you over to Jed, if he has

Page 41

1 any questions for you.

2 * * *

3 E X A M I N A T I O N

4 BY MR. NOLAN:

5 Q. Hello, Mr. Napier. Thanks for meeting
6 with us today.

7 A. No problem.

8 Q. I have just a couple questions.

9 You denied Mr. Daugherty's mortgage
10 loan application because of foreclosure,
11 correct?

12 A. Yes, sir.

13 Q. Now, when you pulled his consumer
14 credit report from TransUnion, there was no
15 foreclosure, correct?

16 A. Correct.

17 Q. But the TransUnion file did have other
18 adverse tradelines, correct?

19 A. Yes, sir.

20 Q. Such as tax liens and medical bills;
21 is that correct?

22 A. Yes, sir.

23 Q. And despite those other negative
24 tradelines on his credit report, you still

1 extended a loan to Mr. Daugherty; is that
2 correct?

3 A. Yes, we did.

4 Q. Had there been a foreclosure on the
5 TransUnion report, would you have extended him a
6 loan on the consumer application?

7 A. Repeat that again, please.

8 Q. Sorry.

9 If the foreclosure had appeared on his
10 TransUnion credit report during his consumer
11 loan application, would you have granted his
12 application?

13 A. For a consumer loan? Probably not.

14 Q. So but for the foreclosure -- strike
15 that.

16 Once One Community saw the foreclosure
17 notation on the Tri-Merge application, they
18 immediately denied his application, correct?

19 A. Correct.

20 MR. NOLAN: I don't have any
21 further questions.

22 * * *

23

24

EXAMINATION

2 BY MR. KENNEY:

3 Q. Mr. Napier, I have a few follow-up
4 questions.

5 We discussed earlier that the
6 processes for applying for a consumer loan are
7 different than the processes for applying for a
8 mortgage loan, correct?

9 A. Correct.

10 Q. And is it fair to say that the
11 processes for applying for a mortgage loan is a
12 bit more strict than applying for a consumer
13 loan of lesser value?

A. Yes, that would be a fair assessment.

15 Q. And you had previously said that had
16 the foreclosure appeared on Mr. Daugherty's
17 TransUnion report, you would likely have denied
18 him the consumer loan; is that right?

19 A. Correct.

20 Q. Is it fair to say that despite the
21 fact that the foreclosure was not appearing on
22 the TransUnion report, you knew that there was a
23 foreclosure appearing on his Equifax report, or
24 at least on a Tri-Merge report, at the time the

1 loan was granted?

2 A. Yes.

3 Q. So despite the fact that you knew that
4 there was a foreclosure report appearing on his
5 credit report, One Community still offered the
6 loan to him simply because that foreclosure
7 didn't appear on the TransUnion report?

8 A. No, chances are if we had pulled only
9 a TransUnion credit report, we would not have
10 known. But for conversation sake, if the
11 foreclosure was on the TransUnion report and he
12 had applied for a consumer loan, he would have
13 been denied.

14 Q. So before the TransUnion report was
15 run, One Community knew that a foreclosure was
16 appearing on the Tri-Merge report, correct?

17 A. Correct.

18 Q. So One Community knew that the
19 foreclosure was appearing, but offered the loan
20 for the -- the consumer loan, because it didn't
21 show up on the TransUnion report; is that right?

22 A. That, and the circumstances.

23 Q. And what circumstances are those?

24 A. That he was trying to dispute that on

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1 his credit report.

2 Q. Okay.

3 I don't think I have any further
4 questions for you.

5 A. Okay. Thank you.

6 Q. I appreciate your time. Thanks again,
7 we really do appreciate it.

8 A. All right, sir.

9 Q. Oh, I'm sorry, Jed has another
10 question for you.

11 MR. NOLAN: I'm sorry. It will be
12 quick.

13 * * *

14 E X A M I N A T I O N

15 BY MR. NOLAN:

16 Q. You testified that the foreclosure was
17 a stop sign, so to speak, on his credit
18 application, correct?

19 A. Repeat that again. Was a what sign?

20 Q. A stop sign.

21 A. Yes. Yes.

22 Q. Is a tax lien a stop sign on a
23 mortgage application?

24 A. Not always.

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1 Q. And were other negative tradelines a
2 stop sign on his mortgage application?

3 A. Not in every circumstance, no.

4 MR. NOLAN: That's all I have.

5 MR. KENNEY: I'll just follow up
6 with one last thing.

7 * * *

E X A M I N A T I O N

9 BY MR. KENNEY:

10 Q. You said "not always." But it is
11 possible that tax liens could be a stop sign on
12 a mortgage application; is that correct?

13 A. Yes, sir.

14 Q. Okay.

15 A. Again, it's going to have to be looked
16 at on an individual case.

17 Q. Sure, sure.

18 A. If it's a small tax lien or a large
19 tax lien, you know.

20 O. Sure.

21 And I think that's all the questions
22 we have for you.

23 A. Okay, gentlemen. Appreciate it.

24 MR. WOOFTER: He'll waive review.

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1 and signature.

2 THE COURT REPORTER: Are you
3 gentlemen ordering your transcripts?

4 MR. KENNEY: Yes. This is Jon
5 Kenney. I'd like an E-tran with electronic
6 exhibits. I'm sorry, we don't need any
7 exhibits, I have all those. So just an E-tran
8 and just regular delivery.

9 THE COURT REPORTER: Mr. Nolan?

10 MR. NOLAN: Yes, I'll take a
11 condensed copy, regular delivery is fine.

12 THE COURT REPORTER: Thank you.

13 * * *

14 (Whereupon, this deposition was
15 concluded at 2:54 p.m.)

16 * * *

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1 THE STATE OF :
2 WEST VIRGINIA :
3 : SS: C E R T I F I C A T E
4 COUNTY OF OHIO :

5 I, CONNIE M. NICHOLS, Registered
6 Professional Reporter, do hereby certify that
7 the testimony given by the within-named witness,
8 STEVEN F. NAPIER, was by me reduced to stenotype
9 in the presence of the witness; afterwards
10 reduced to Computer Aided Transcription under my
11 direction and control; that the foregoing is a
12 true and correct transcription of the testimony
13 given by said witness.

14 I do further certify that this
15 testimony was taken at the time and place in the
16 foregoing caption specified; that the reading
17 and signing was not requested, and this
18 deposition was completed without adjournment.

19 I do further certify that I am not a
20 relative, counsel or attorney of either party,
21 or otherwise interested in the event of this
22 action.

23 I, to the best of my ability, do
24 further certify that the attached transcript
meets the requirements set forth within
Article 27, Chapter 47 of the West Virginia
Code.

25 IN WITNESS THEREOF, I have hereunto
26 set my hand in Wheeling, West Virginia, on the
27 1st day of September, 2015.

28
29
30
31 CONNIE M. NICHOLS
32 Registered Professional Reporter
33
34

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1 THE STATE OF :
2 WEST VIRGINIA :
3 : SS: C E R T I F I C A T E
4 COUNTY OF OHIO :

5
6 I, CONNIE M. NICHOLS, Notary Public
7 within and for the State of West Virginia, duly
8 commissioned and qualified, do hereby certify
9 that the within-named witness, STEVEN F. NAPIER,
10 was by me duly sworn to testify to the truth,
11 the whole truth and nothing but the truth in the
12 cause aforesaid.

13
14 I do further certify that I am not a
15 relative, counsel or attorney of either party,
16 or otherwise interested in the event of this
17 action.

18
19 I, to the best of my ability, do
20 further certify that the attached transcript
21 meets the requirements set forth within
22 Article 27, Chapter 47 of the West Virginia
23 Code.

24
25 I further certify that the reading and
26 signing of the transcript was not requested.

27
28 IN WITNESS THEREOF, I have hereunto
29 set my hand and affixed my seal of office at
30 Wheeling, West Virginia, on the 1st day of
31 September, 2015.

32
33

34
35 CONNIE M. NICHOLS
36 Notary Public within and for the
37 State of West Virginia

38 My Commission expires:
39 October 16, 2016

40

[& - bankruptcy]

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[basically - daugherty]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.